IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5543 of 1984

with

SPECIAL CIVIL APPLICATION No 4854 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MADRESA JAMEA ARABIYA TALIMUL ISLAM

Versus

RAHIMABEN U VORA & ANR.

Appearance:

1. Special Civil Application No. 5543 of 1984

MR DC DAVE for Petitioner

None present for Respondents

2. Special Civil Application No 4854 of 1985

None present for Petitioner

MR DC DAVE for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

C.A.V JUDGEMENT

1. The petitioner, a public trust, registered under the provisions of the Bombay Public Trust Act, 1950 is being run and conducted by a religious minority community which is constituted for the purpose of carrying out the management of Madressa Trust for imparting moral, religious and secular education to the boys and girls of the minority community in accordance with the tenets, traditions and usages. The petitioner trust runs the education institution and is a minority institution. The respondent no.1 was appointed as a Assistant Teacher on probation in the primary school run by the petitioner. A copy of the appointment order of the respondent no.1 is filed by the petitioner as annexure `A' to this petition. From the order annexure, `A' it is not borne out that appointment of respondent no.1 was on probation but it appears to be an appointment on temporary and adhoc basis. Under annexure `A' at page no.18 dated 14th February, 1983, the service of the petitioner were ordered to be terminated from 16th February, 1983. From the order dated 14th February, 1983 it is clear that the services of the petitioner were terminated for the reasons that her work was not satisfactory and she was in service on temporary and adhoc basis. The petitioner has come up with a case that the respondent no.1 has not accepted the said order. The petitioner has further come up with a case that it is informed to the respondent no.2 about the termination of the services of the respondent no.1 on 19th February, 1983. The respondent no.1 served a notice through her advocate to the petitioner on 7-3-1983 and inter-alia, contended that her services cannot be terminated ; that she is being prevented from carrying on her duties; that on 16-2-1983 an effort was sought to be made to serve her with a notice terminating her services; that thereafter she filed a leave application which was filed and not accepted.

2. The respondent no.2 under its letter dated 8th March, 1983 called upon the petitioner to produce before him the confidential reports of the respondent no.1 as well as the copies of the memos, if any. The petitioner replied to the same and enclosed the details of the memos served from time to time to the respondent no.1. The reply has also been sent by the petitioner to the notice of the respondent no.1 dated 7-3-1983 which she sent through her advocate. The petitioner send the reply through the advocate. In the reply to the notice, the petitioner has pointed out that the conduct and behaviour of the respondent no.1 was uncourteous and as such, it does not befit a lady teacher; that she was irregular in her duties and she had to be reprimanded from time to

time. The allegations made against the petitioner in the notice by the respondent no.1 were strongly denied. The action of the termination of the services of the respondent no.1 were said to be in the interest of the institution. The respondent no.2 vide its letter dated 4-4-1983 directed the petitioner to immediately reinstate the respondent no.1. In the said order, the respondent no.2 stated that the procedure contemplated by Schedule `F' of the Bombay Primary Education Rules, 1949 has not been complied with, and as such, the notice terminating the services of the respondent no.1 deserves to be cancelled. It has further been stated in the said order that on inquiry, it is found that the allegations made against the respondent no.1 are not proved. Lastly, the respondent no.2 has stated that in case within four days of the receipt of the said order, the respondent no.1 is not reinstated, the disciplinary action would be taken against the institution.

3. The petitioner replied to the aforesaid order vide its letter dated 9-4-1983 through its advocate. In the reply it has been stated that the respondent no.1 was appointed on probation as Assistant Teacher. Her services were terminated during the probationary period and it has been done in accordance with law. It has further been stated that the behaviour of the respondent no.1 was far from satisfactory. The respondent no.2 issued another order dated 26-7-1983 calling upon the petitioner to reinstate the respondent no.1, failing which action would be taken against the institution. The petitioner replied to the said order also vide its letter dated 12-9-1983 sent through its advocate. In the reply it has been stated that the respondent no.2 had no authority to compel the petitioner to reinstate the respondent no.1. In the reply it has been mentioned that the provisions of Schedule `F' of Rules, 1949 which are sought to be in enforced against the petitioner, are not at all attracted as it is a minority institution. The petitioner sent another reply dated 14-11-1983. The District Education Officer, Kaira vide its letter dated 31st March, 1984 directed the respondent no.2 to pay directly the salary due and payable to the respondent no.1 and realise the remaining amount from the grant of the petitioner. The petitioner vide its letter dated 21st April, 1984 inter-alia, informed the respondent no.2 that the respondent no.1 is entitled to Rs.67-93 being the amount towards her salary for 15 days of February, 1983, out of Rs.337-93, as she has not deposited Rs.270/with the petitioner, the amount collected by her towards the fees from the students. It has further been stated that she was entitled to one month pay of Rs.670/

in lieu of notice.

4. The respondent no.2 replied to the aforesaid letter of the petitioner and stated therein that the respondent no.1 was entitled to get the salary upto date. The petitioner sent a reply to the letter of the respondent no.2 dated 6-6-1984 on 11-6-1984 through the advocate and stated therein that the respondent no.1 was appointed temporarily on probation and within two years she has been relieved. It has further been stated that the petitioner being a minority institution, the provisions of Schedule `F' are not applicable to it. The respondent no.2 under its letter dated 29-6-1984 informed to the petitioner that out of the grant of Rs.19612-81 the respondent no.1 is entitled to be paid Rs.13,288-10 and therefore, the petitioner is only entitled to receive the grant of Rs.6324-71. The petitioner immediately sent a reply of the aforesaid letter to the respondent no.2. The respondent no.2 addressed a letter to D.E.O. on 31st July, 1984 with a copy endorsed to the advocate of the petitioner and reiterated that the provisions of Schedule `F' apply and that the services of a teacher cannot be terminated except after following the procedure as laid down in Schedule `F' of Rules, 1949. Hence, the petitioner filed this Special Civil Application before this court and the challenge has been made thereunder to the orders of respondent no.2.

5. The respondent no.1 separately filed a Special Civil Application No.4854 of 1985 before this Court. The facts of that case are as follows:

In this petition, the respondent no.1 has challenged the impugned order of termination of her service dated 14th February, 1983 by the petitioner. The respondent no.1 has come up with a case that the order dated 14-2-1983 has been withdrawn by the petitioner institution vide its order dated 27th February, 1983, but thereafter again by an order dated 7-9-1983, the order dated 27-2-1983 was cancelled. So far as the dates which have been given by the respondent no.1 in her petition are concerned, it is difficult to understand whether these dates are correct or not. Be that as it may. The respondent no.1 has prayed for quashing of those orders and further prayed for the consequential benefits follows therefrom.

6. Heard learned counsel for the trust. None present for the Teacher, respondent no.1.

7. Shri Dave, learned counsel for the petitioner

contended that the termination of the services of the respondent no.1 has rightly been made as her work was not satisfactory. It was a simplicitor termination without causing stigma and as such, the grievance made by the respondent no.1 that the inquiry was not held, is not tenable. It has next been contended that the institution is a minority institution under Article 30 of the Constitution of India, and as such, the provisions of Schedule `F' of Rules, 1949 are not applicable to it. The counsel for the petitioner relied upon the decision of this court in the case of Benson Knock Semual vs. State of Gujarat & Ors. reported in 1984(1) GLR 691 in support of the aforesaid contention. Carrying further his argument, the counsel for the petitioner urged that the whole approach of respondent no.2 in the matter is perverse and Schedule `F' of Rules, 1949 was not applicable to the institution. Shri H.L. Jani, on the other hand, fairly conceded that in view of the decision of this court in the case of Benson Knock Semual vs. State of Gujarat & Ors. (supra) the provisions as contained in Clause 13 and 15 of Schedule `F' of Rules 1949 as amended in the year 1978 are not applicable in the present case.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. From the facts which have been stated by the petitioner trust in its Special Civil Application, it is no more in doubt that the services of the respondent no.1 have been terminated because of her unsatisfactory work as well as the alleged misconduct. The petitioner trust, in para no.12 has stated that the conduct and behaviour of respondent no.1 was uncourteous and such that it does not befit a lady teacher. It has further been stated that she was irregular in her duties and she had to be reprimanded from time to time. From the averments made in Para no.19, another misconduct has been borne out that the respondent no.1 has not deposited Rs.270/- with the petitioner trust. This amount of Rs.270/- was the amount collected by her towards the fees from the students. The petitioner has come up with a case that it was a case of appointment of the respondent no.1 on probation at one stage, and at later stage, the trust has stated that the appointment of respondent no.1 was on temporary basis.

9. The appointment order of the respondent no.1 is on the record and the words used therein are very significant and important. The appointment of respondent no.1 has been stated to be on adhoc temporary basis and not as a probationer. This plea has been taken by the petitioner of the appointment of respondent no.1 probably

to exercise the right of simplicitor discharge of probationer. It is difficult to accept that the appointment of respondent no.1 was on probation. No material has been produced on record by the petitioner to show and establish that the appointment of respondent no.1 was on probation. The nature of appointment is to be considered with reference to the order of the appointment of the employee, and as stated earlier, from the order of the appointment of respondent no.1 it is explicit that she has been appointed on adhoc temporary basis. It is true that this court in the case of Benson Knock Semual vs. State of Gujarat & Ors. (supra) declared certain provisions of Schedule `F' of the Rules, 1949 as amended in the year 1978 to be violative of Article 30 of the Constitution of India, and as such not applicable to the minority institution, but then question does arise whether the minority institution can be permitted to act arbitrarily and capriciously in the matter of termination of the services of its temporary or permanent employee. The respondent no.1 was given appointment on 11-3-1981 and her services were terminated with effect from 16th February, 1983, say by the day of termination of her services, she had to her credit about 1 year and 11 months service. In clause 3 of Schedule `F' of Rules, 1949, a temporary employee has been defined which means an employee appointed for a definite period on a post which is clearly vacant. It is not the case of the petitioner that the respondent no.1 has been appointed on vacant post. Clause 4 of Schedule `F' of Rules, 1949 makes a provision for period of probation. An employee appointed to a post clearly vacant may be on probation for a period of two years, he or she shall be confirmed as a permanent employee after the probation period is over, if his or her work is found to be satisfactory. The work of the probationer for confirmation is to be adjudged on the basis of the confidential report written by the officers competent to make the appointment after every academic term. The other clauses of Schedule `F' except those which have been struck down by this Court under Article 30 of the Constitution of India in the case of Benson knock Semual Vs. State of Gujarat & Ors. (supra) are applicable to the present case. To know what is the true nature of the appointment of respondent no.1, the provisions of clause 3 and 4 of Schedule `F' are relevant and on close reading of the provisions with the order of appointment of respondent no.1, I am satisfied that the appointment of respondent no.1 was not on probation, but it was an adhoc temporary appointment. The petitioner has not permitted the respondent no.1 to complete two years, and as such, the proviso to clause 3 of Schedule `F' is also not

attracted. Under that proviso, it has been provided that a temporary employee on completion of two years service shall be treated as a permanent employee. The provisions of clause 13 and 15 are not attracted in the present case. Clause 13 relates to termination of the services of a permanent trained teacher and clause 15 relates to termination of services of a permanent employee. Clause 13 is for the teaching staff whereas clause 15 is a provision for nonteaching staff of the institution. The learned counsel for the petitioner is unable to point out from Schedule `F' which makes the provision for the termination of services of an adhoc and temporary employee. The order of termination of the services of respondent no.1 is not stigmatic. It only gives out that the termination of respondent no.1 has been made as her services were not satisfactory.

10. From the facts which have come on the record, one thing is clear that the respondent no.1 has been given from time to time memos regarding her unsatisfactory work. Even if we proceed with the assumption that it was a case of probation then too the respondent no.1 has been pointed out her defaults or errors in her working by the management from time to time. Many times she has been reprimanded also. The petitioner has a right to terminate the services of its temporary employee, if her work was not satisfactory. It is not the law that without giving notice and opportunity of hearing, the employer has no right to terminate the services of temporary employee. Where the temporary employee has been given sufficient opportunity to improve his or her work and despite of that if she has not availed of that opportunity then I do not find any illegality in case, the services of such class of employee has been terminated after giving one month notice. The only safeguard which is to be taken is that the order should not be stigmatic, which is not a case here. Though the respondent no.2 has tried to make out a case as if the services of the respondent no.1 has been terminated by way of penalty, but that approach of the said authority seems to be not correct. It is true that the petitioner served memos from time to time to the respondent no.1 and she has been also reprimanded, but from that fact alone, it cannot be said or accepted that the termination of the services of respondent no.1 was by way of penalty. It is true that even in the case of termination of services of the temporary employee the order made may not be conclusive and this court may have power to lift the veil and see whether it is a simplicitor termination or termination by way of penalty. But not in all cases of the termination of the employee this court has to lift

the veil and go to make an inquiry and to go in depth to find out whether the order is punitive or not. The Apex Court in the case of M.P. Hasta Shilpa Vikas Nigam Ltd. vs. Devendra K. Jain reported in 1995 (1) SCC 638 held that no hearing is to be given to a temporary employee while terminating his or her services. The totality of the facts of the case has to be considered. Present is a case where the services of respondent no.1 has been terminated only on the ground and the reason that her work was not satisfactory. She has been given sufficient opportunity to improve her work, but when she has not improved, the petitioner was perfectly legal and justified to take the decision to terminate her services as she was temporary employee. The petitioner has further taken care to give her one month notice. If we take it to be a case of simplicitor discharge of probationer then too the order of termination of the services of the respondent no.1 does not suffer from any infirmity or illegality. It is not a stigmatic order nor the services of the petitioner in the facts of the present case can be said to be dispensed with by way of penalty. Reference in this respect may have to the decision of the Supreme Court in the case of M.P. Hasta Shilpa Vikas Nigam Ltd. vs. Devendra K. Jain (supra). Sufficient opportunity has been given to the respondent no.1 to improve her work by giving her memos. Those memos are not the foundation for the termination, but may be the motives. Reference may have also to the decision of this Court in the case of Prashant M. Shah vs. State of Gujarat reported in 1995 (1) GLR 780.

11. The provisions of Clause 13 and 15 of Schedule `F' of Rules, 1949 as amended in the year 1978 are not applicable to the minority institution, and as such, the approach of the respondent no.2 that the termination of the services of respondent no.1 has been made without prior approval of the Education Officer is of no substance. The respondent no.2 has no authority whatsoever to say anything in the matter.

12. The net result of the aforesaid discussion is that the writ petition deserves to be accepted. In the result, the Special Civil Application No.5543 of 1984 succeeds and the same is allowed. The orders Ex. `G' dated 4-4-1983, Ex.`I' dated 26-7-1983, Ex.`L' dated 31-3-1984, Ex.`P' dated 29-6-1984 and Ex.`R' dated 31-7-1984 are quashed and set aside. Rule is made absolute.

13. In view of the acceptance of the Special Civil Application No.5543 of 1984, the relief as prayed by the

respondent no.1 in her Special Civil Application no.4854 of 1985 cannot be granted. The order of termination of the her services has been held to be valid, and as such, this Special Civil Application has become infructuous. Order accordingly.

14. In the result, the Special Civil Application No.4854 of 1985 is dismissed as having become infructuous. Rule discharged.

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